MEMORANDUM - regarding the competence of General Convention to insure the right of women to ordination and consecration under the existing provisions of the Constitution, Canons and Ordinal of the Episcopal Church.

The primary concern of this memorandum is to substantiate the competence of General Convention to insure the right of women to ordination and consecration without changing the language of the Constitution, Canons and Ordinal of the Episcopal Church. The Canons will receive little attention for two reasons: (1) the principles of constitutional construction apply with equal force to canonical construction; and (2) collateral canons such as Canon 7, "Of the Church Pension Fund," which might require amendment should women be ordained and consecrated, can be appropriately amended by a single General Convention.

SECTION I

The present language of Articles II, III and VIII of the Constitution, and that of the pertinent Canons, permits the Consecration and Ordination of Women.

General Convention would be exercising its historic prerogative if it resolved to interpret the words "Bishop", "Priest" and "Deacon", together with their referent pronouns "he", "his" and "him", to include both males and females wherever such words appear in the Constitution and Canons. Such action by Convention with regard to Articles II, III and VIII and the appropriate Canons would insure the constitutional and canonical right of women to ordination to the diaconate and priesthood and consecration to the episcopate.

On the First Day of General Convention, 1946, the House of Deputies in its first resolution used this prerogative with regard to Article I of the Constitution to seat a woman deputy. By voting to seat Mrs. Randolph H. Dyer of Missouri the House of Deputies interpreted the word "Laymen" in Sec. 4 of that Article, which defines the representation of the respective Dioceses in that House, to include both males and females. The action taken by the Deputies is reported as follows on page 102 of the Journal of General Convention, 1946:

> The Secretary inquired of the House if there were any objection to the seating of any member whose name was called. The Rev. Tom G. Akeley, of Maine, inquired what the rule might be in regard to seating in the House a woman who had been elected as a deputy. The Hon. Augustus N. Hand, of New York, said interpretation of "laymen", "person" and "man" in statutes was all inclusive. He moved that Mrs. Randolph H. Dyer of Missouri, be seated. Dr. Spencer Miller, Jr., of Newark, offered a substitute that the matter be referred to the Committee on Elections. Mr. A. D. Cochran, of Oklahoma, moved as a substitute for both motions that the seating of Mrs. Dyer be referred to the Committee on Constitution and Canons. The motion was lost. Mr. Anson T. McCook, of Connecticut, informed the House that if it wished a Canon dealing with such questions it could refer the matter to the Committee on Canons, but meanwhile he called for Judge Hand's motion. Carried.

The same Journal reports (pp. 218-219) the refusal of the House of Bishops to take further action in this matter. Specifically, the Deputies rejected on the Fifth Day a constitutional amendment to Sec. 4 of Article I, which would have substituted "Lay persons" for "Laymen" in that Section. On the Seventh Day there was introduced in the House of Bishops the following resolution, which purposed to extend the House of Deputies' inclusive interpretation of "Laymen" throughout the Constitution, Canons and other official documents of the Church:

> On motion of the Bishop of Western Massachusetts, on the Seventh Day, the following resolution was referred to the Committee on Canons:
>
> RESOLVED, That we request the General Convention to interpret the word, "laymen," in the Constitution, Canons, and other official documents of the Church, that it will be understood to include lay women as well as lay men, and further, be it
>
> RESOLVED, That we call upon the women of the Church to prepare themselves to cooperate with the fullest devotion in all types of work open to the laity of the Church.

The above resolution was referred to but not reported out of the Committee on Canons, and no further action was taken on it by either House.

At the next General Convention, in 1949, the House of Deputies again exercised its prerogative to interpret the word "Laymen" in Sec. 4 of Article I of the Constitution. At this Convention not one but four women had been elected by their respective Dioceses to serve as Deputies. That House did not consider itself bound by the precedent set at the previous Convention, however, and this time they resolved to give a contrary interpretation to the Article in question; by refusing to seat the women elected they, by implication, construed "Laymen" to be an exclusive rather than an inclusive statutory word. The action of the House of Deputies is reported as follows on page 102 of the Journal of General Convention, 1949:

> Spencer Ervin, of Pennsylvania, presented the following resolution:
>
> RESOLVED, That the women deputies from the following dioceses be not seated: Nebraska, Olympia, Missouri and Puerto Rico, as not eligible under Constitution, Article I, Section 4.
>
> The resolution was adopted, 321 votes to 242 votes.

At General Convention, 1957, the House of Deputies decided again to seat women elected to that House. This time the Deputies elected to go the more tedious route, the route they refused to take in 1946, of amending the language of Sec. 4 of Article I, by substituting "Lay persons" for "Laymen" in that Section. Journal of General Convention, 1967, pp. 391-393. The House of Bishops concurred in their resolution. Because the resolution contains a constitutional amendment, it will not take effect unless and until it is again passed by the next regular General Convention in October, 1970.

At Special Convention II, 1969, the House of Deputies, having begun the process of seating women in Convention through Constitutional amendment in 1967, declined to seat a woman elected a Deputy to Special Convention. It could have done so by interpreting "Laymen" to include females as it did in 1946. Journal of Special Convention II, 1969, pp. 169-170.

To summarize, the history of Convention's deliberations about seating women in the House of Deputies reflects a tacit agreement that the authors of the Constitution and Canons did not contemplate this possibility. There has also been common agreement that Convention was competent to permit women to serve as Deputies. The two questions which have been debated over and over again since 1946, particularly in the House of Deputies, are:

1. Does this House want women to participate in their deliberations? In some years the answer has been "Yes", in others "No".

In those years where the answer has been "Yes", a second question faced the Deputies:

2. What route should be taken to permit the participation of women? Should the House of Deputies give an inclusive interpretation to the word "Laymen?" Or, should Convention devote six years to amending the Constitution by substituting "Lay persons" for "Laymen" and then, after final passage of the amendment, wait three more years for a Convention to which Dioceses could send women Deputies with the assurance that they would be seated?

In 1946 and 1957 the House of Deputies answered the first question "Yes"; they did want women to participate. But, with regard to the second question regarding the route to be taken, there were substantial differences. The Deputies in 1946, under the leadership of Judge Hand, said "Yes" to interpreting the Constitution, and "No" to amending it. In 1957 it was "Yes" to amending the Constitution. In 1969, while the amendment was pending, the House of Deputies said "No" to interpreting the Constitution.

It should be added that the House of Bishops has always shown itself agreeable to the seating of women as Deputies. It manifested no objection when the House of Deputies said "Yes" to interpretation in 1946, and it concurred when the Deputies said "Yes" to amendment in 1957.

The history of the construction and the amendment of Article I has been detailed because it offers precedents for General Convention if it should want to insure the rights of women to ordination and consecration. There is precedent for Convention insuring these rights by a single resolution giving an inclusive interpretation to the words "Bishop", "Priest" and "Deacon" and the referent pronouns "he", "his" and "him" as they appear in Articles II, III and VIII, and in Canons 26 through 52 (i.e., the Canons included in Section III of the Canons, entitled "The Ministry"). There is also precedent for Convention insuring these rights through the long process of constitutional and canonical amendment. If the Bishop and Deputies want women to have the rights of ordination and consecration, they will elect either the short route or the long one. If they do not want women to have these rights, they will do neither.

The short route of constitutional and canonical interpretation is earnestly recommended in this memorandum. Assuming that Convention will acknowledge the pressing need to insure the rights of women to ordination and consecration, it would be so inconsistent as to be "foot-dragging" not to take the shortest, valid route.

There remains the question of whether, given the necessary consents within his Diocese, an individual Bishop, without any action by Convention, may be qualified to interpret Article VIII and the appropriate Canons so as to permit him to ordain women to the diaconate and priesthood. Can he do this alone just as the House of Deputies, alone and without the concurrence of the House of Bishops, can interpret the Constitution with regard to the qualifications of its members? The question is not academic in the light of recent although isolated instances of ordination of women to both the diaconate and the priesthood of the Episcopal Church. The question is, however, beyond the scope of this memorandum.

SECTION II

The Present Language of the Ordinal Permits the Consecration and Ordination of Women.

The purpose of the Ordinal of the Book of Common Prayer is not statutory to the same degree as the Constitution and Canons of the Episcopal Church. In its Preface and in the services of Ordination and Consecration, however, there also appear such words as "man", "deacon", "bishop", "brother" and the referent pronouns "he", "his", and "him". These words are statutory in the sense that they describe those persons eligible for ordination and consecration. It is submitted in the following section of this memorandum that all such words in the Ordinal, like the same words in the Constitution and Canons, can be interpreted by a simple resolution of General Convention to include females as well as males; and that the right of women to ordination and consecration would be further insured through such action by Convention.

There is no question that the authors of the Ordinal, like the authors of the Constitution and Canons, contemplated the ordination and consecration of males only; nevertheless there is good precedent for General Convention interpreting parts of the Prayer Book, as well as the Constitution and Canons, so as to go beyond the intent of its authors. Such a broadening interpretation of the Prayer Book's provisions has been made by a simple resolution of Convention; and this has been done in spite of the fact that Convention also has authority to achieve the same result by revising the Prayer Book as it amends the Constitution: by the concurrent action of two successive, regular Conventions.

A clear example of the exercise of the authority of Convention to interpret the Prayer Book by a simple resolution is to be seen in the action of the General Convention of 1949 relative to the use of intinction in the administration and reception of the Holy Communion. There has never been any question that administration of the wine from a common challice, separate from the administration of the bread, is the only method of administration expressly intended and directed by the Prayer Book Offices and by Scripture and the unbroken tradition of the Church "from the Apostles' time."

Without altering any of the language of the Prayer Book Offices, however, the Convention of 1949 adopted a resolution permitting a bishop having jurisdiction to authorize intinction as an alternative method of administration. Copies of pages 263 and 264 of the Journal of General Convention, 1949, quoting the resolution and describing the action of both Houses, are appended as Appendix I.1, 2 of this memorandum.

It is pertinent to point out that permission to use intinction was granted by the Episcopal Church in 1949 after the question had been referred to the Lambeth Conference of 1948. The appended resolution of General Convention notes the holding of the Lambeth Conference "that any part of the Anglican Communion by provincial regulation according to its own constitutional procedure has liberty to sanction administration by intinction as an optional alternative to the traditional procedure."

The Episcopal Church in the U.S.A. has approached the Lambeth Conference on the question of the ordination and consecration of women. The Special Meeting of the House of Bishops, 1965, authorized the appointment of a Committee to Study the Proper Place of Women in the Ministry of the Church. Journal of General Convention, 1965, Supplement A, p. 30. The Committee appointed pursuant to that authorization presented a thorough and profound report to the Special Meeting of the House of Bishops, 1966, which report is appended to this memorandum as Appendix 2. In response to the recommendation contained in that report, the 1966 Special Meeting adopted a resolution requesting the Lambeth Conference of 1968 to explore thoroughly "the proper place of women in the ministry." The House of Bishops next tabled a resolution stating that "no foreseeable circumstances could alter the conviction of the Church that women are incapable of receiving Holy Orders." Journal of the General Convention, 1967, Supplement B, pp. 50-51. The report of the action of the House of Bishops on both the above resolutions are appended as Appendix 3.

The Lambeth Conference of 1968 first referred the question of "Women and the Priesthood" to its Subcommittee 21, whose thoughtful report appears on pp. 106-108, The Lambeth Conference 1968, Resolutions and Reports (New York: Seabury Press, 1968). On page 93 of the same volume the subcommittee's report is summarized as follows in the covering statement of the Section on "Renewal in Ministry", of which Subcommittee 21 was a part:

> In the whole extent of the Anglican Communion there is a diversity of cultures and patterns of human society. We should expect to find -- and we should encourage -- a corresponding diversity in forms of ministry. In some provinces no place can be found for a permanent diaconate; in others there is a clear need for it. In some provinces there is a strong case for women being ordained to the priesthood; in others this would not yet be consonant with the character of the culture in which the Church is at work.

Among the resolutions finally adopted by the Lambeth Conference as a whole, five had to do with the ordination of women (ibid., pp. 39,40). Two of the five resolutions most germane to this memorandum are set out below:

> The Conference affirms its opinion that the theological arguments as at present presented for and against the ordination of women to the priesthood are inconclusive.
>
> The Conference recommends that, before any national or regional Church or province makes a final decision to ordain women to the priesthood, the advice of the Anglican Consultative Council (or Lambeth Consultative Body) be sought and carefully considered.

There is little question that the proponents of the ordination of women in the Episcopal Church in the U.S.A. would have preferred the kind of blessing Lambeth gave to intinction to the above recommendation that women not be ordained until "the advice of the Anglican Consultative Council (or Lambeth Consultative Body) be sought and carefully considered." There is no question, however, but that the above words are precatory in nature and, as such, not binding on the Episcopal Church. The "Note" introducing the Resolution of the Conference (ibid., p. 28) makes this clear when it says: "No resolution of the Lambeth Conference is binding upon any part of the Anglican Communion unless and until it has been adopted by the appropriate canonical authority."

Again, General Convention can and will decide how strong and how urgent is "the case for women being ordained" in the Episcopal Church. The purpose of this section of this memorandum is to point out that Convention can acknowledge both the strength and the urgency of the case and, by a single resolution, interpret the words of the Ordinal to include females as well as males in its provisions.

As stated at the end of Section I Supra, there remains the additional question of an individual bishop's authority to interpret the words of the Constitution and Canons to include females as well as males as eligible for ordination; and no attempt is made in this Section to answer the related question of an individual bishop's authority to make a similar interpretation with regard to the Ordinal.

SECTION III

CONCLUSION

This memorandum is written to substantiate the competence of General Convention to interpret the Constitution, Canons and Ordinal as they now stand so as to insure the right of women to ordination and consecration. It is granted that such an interpretation would go beyond the intent of the authors of these documents. There is, however, good precedent for such action in the history of General Convention itself.

There is also good precedent for such action in the history of the interpretation given the Constitution of the United States. This precedent was recently afforded by the ruling of a three-judge Federal Court in Alabama in the civil suit of White v. Crook, 251 F. Supp. 401 (1966). One aspect of the case involved the statutory exclusion of women from jury service in Alabama. The court, in holding that women have a right not to be excluded as a class from jury service in view of modern political, social and economic conditions said (p. 408):

> This attack on Alabama's complete exclusion of women from jury service (only "male citizens of the country" were qualified by Alabama statute for jury service) is based on the Equal Protection Clause of the Fourteenth Amendment. The argument that the Fourteenth Amendment was not historically intended to require the states to make women eligible for jury service reflects a misconception of the function of the Constitution and this court's obligation in interpreting it. The Constitution of the United States must be read as embodying general principles meant to govern society and the institutions of government as they evolve through time. It is therefore this Court's function to apply the Constitution as a living document to the legal cases and controversies of contemporary society. When such an application to the facts in this case is made, the conclusion is inescapable that the complete exclusion of women from jury service in Alabama is arbitrary.

General Convention can also apply the Constitution, Canons and Ordinal of the Episcopal Church as "living documents" to the question of women's rights to ordination and consecration. Society and the institutions of ecclesiastical as well as civil government are "evolving through time." The Federal Court recognized modern political, social and economic conditions and went beyond the specific intent of the authors of the Fourteenth Amendment to extend its

protection to new rights of women. The General Convention of 1946 did the same thing when it went beyond the specific intent of the authors of Article I of the Church's Constitution of extending its protection to the rights of a woman duly elected a Deputy to that Convention. Once again Convention has the opportunity to interpret its documents as "living documents;" this time with regard to the rights of qualified women to ordination and consecration.

Subcommittee 21 of the 1968 Lambeth Conference described the opportunity in theological language. It said (p. 107): "We believe that many will welcome what we have said, and see in it a movement of the Holy Spirit inviting the Church to fresh initiatives."

Finally, it should be said that the idea of opening Holy Orders to women is no outrageously new concept or fad. In March of 1916 William Temple wrote: "Personally I want (as at present advised) to see women ordained to the priesthood." Temple's biographer, F.A. Iremonger commented, "He championed the cause of women, not because they were women but because they were human beings whose personality was sacred in the sight of God. ..." William Temple, Archbishop of Canterbury (London and New York: Oxford Press, 1948, p. 305).

August 5, 1970

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